QUESTION 1: BOB AND MARY WERE MARRIED IN SOUTH CAROLINA BEFORE MOVING TO WASHINGTON COUNTY, VIRGINIA. BOB AND MARY HAD ONE CHILD TOGETHER, THEN BOB MOVED BACK TO SOUTH CAROLINA FOR HIS JOB, DECIDED TO BECOME A NORTH CAROLINA RESIDENT, AND THE PARTIES AMICABLY SPLIT. MARY DECIDED TO FILE FOR DIVORCE IN WASHINGTON COUNTY INSTEAD OF SOUTH CAROLINA BECAUSE THAT IS WHERE SHE LIVES AND FILED AN AFFIDAVIT WITH THE COURT IN SUPPORT OF HER DIVORCE PETITION REGARDING THEIR MARRIAGE AND THEIR CHILD. DOES THE COURT HAVE JURISDICTION OVER BOB?

ANSWER 1: YES! THE VIRGINIA LONG-ARM STATUTE (VA. CODE § 8.01-328.1) SPECIFICALLY ALLOWS FOR PERSONAL JURISDICTION OVER A NONRESIDENT DEFENDANT WHEN A PERSON HAS "SHOWN BY PERSONAL CONDUCT IN THIS COMMONWEALTH, AS ALLEGED BY AFFIDAVIT, THAT THE PERSON CONCEIVED OR FATHERED A CHILD IN THIS COMMONWEALTH."

QUESTION 2: JUDGE LEE TRIED A CASE IN BUCHANAN COUNTY, VIRGINIA, RELATED TO A CONTRACT DISPUTE. AS PART OF THE CASE, JUDGE LEE SAID THAT HE COULD TAKE JUDICIAL NOTICE OF THE SIGNATURE BECAUSE BILL HAD SIGNED IT AND "I KNOW BILL'S SIGNATURE." WAS THE JUDGE WRONG TO TAKE JUDICIAL NOTICE OF BILL'S SIGNATURE?

ANSWER 2: YES! THE RULE OF EVIDENCE 2:201 SAYS THAT A COURT CAN "TAKE JUDICIAL NOTICE OF A FACTUAL MATTER NOT SUBJECT TO REASONABLE DISPUTE IN THAT IT IS EITHER (1) COMMON KNOWLEDGE OR (2) CAPABLE OF ACCURATE AND READY DETERMINATION BY RESORT TO SOURCES WHOSE ACCURACY CANNOT REASONABLY BE QUESTIONED." BILL'S SIGNATURE IS NOT COMMON KNOWLEDGE AND THIS IS NOT AN OFFICIAL DOCUMENT. AS SUCH, GRANTING JUDICIAL NOTICE OF THE SIGNATURE WAS INCORRECT.

QUESTION 3: JULIE WAS HIRED TO SERVE A SUBPOENA *DUCES TECUM* TO JUDICIAL SQUARES, INC., A CORPORATION IN WYTHEVILLE, VIRGINIA. JULIE HAD THE NAME OF THE REGISTERED AGENT ON THE SUBPOENA, BUT SHE WAS OUT TO LUNCH. JULIE INSTEAD SERVED HER RECEPTIONIST, WHO SAID SHE HANDLED MOST OF THE PAPERWORK IN THE OFFICE ANYWAY AND WENT HOME. WAS SERVICE ON THE RECEPTIONIST PROPER?

ANSWER 3: PROBABLY NOT. SERVICE MUST BE MADE ON "ANY OFFICER, DIRECTOR, OR REGISTERED AGENT OF SUCH CORPORATION." (VA. CODE § 8.01-299). UNLESS THE RECEPTIONIST WAS AN OFFICER OR DIRECTOR, SERVICE WAS PROBABLY NOT PROPER, WHETHER OR NOT SHE IS USED TO DEALING WITH THE PAPERWORK.

QUESTION 4: JESSICA TOOK OUT A LOAN FROM BANK OF LENDERS WHEN SHE OPENED HER NEW SEWING SHOP SELLING EXPENSIVE SEWING MACHINES IN ABINGDON CALLED "SEW WHAT." THE LOAN WAS SECURED BY ALL CURRENT AND FUTURE INVENTORY OF THE SHOP. JESSICA TOLD HER FRIEND, MELANIE, THAT SHE HAD BEEN APPROVED FOR THE LOAN AND THAT SHE WAS EXCITED TO START HER BUSINESS. BANK OF LENDERS FILED A FINANCING STATEMENT WITH THE STATE CORPORATION COMMISSION, AND JESSICA TOLD MELANIE THAT THE FILING MADE HER FEEL "SO GROWN UP."

MELANIE, TRYING TO HELP HER FRIEND OUT, BOUGHT A SEWING MACHINE FROM HER. HOWEVER, JESSICA WAS UNABLE TO SELL ENOUGH MACHINES AND HAD TO SHUT DOWN HER STORE AND DEFAULTED ON HER LOAN. BANK OF LENDERS TOOK ALL THE MACHINES AND TRIED TO REPOSSESS MELANIE'S MACHINE.

CAN THE BANK OF LENDERS REPOSSESS HER MACHINE, WHICH WAS CURRENT INVENTORY AT THE TIME THE LOAN WAS MADE?

ANSWER 4: NO! EVEN THOUGH MELANIE KNEW ABOUT THE LOAN AND FINANCING STATEMENT, MELANIE WAS A BUYER IN THE ORDINARY COURSE OF BUSINESS (SHE BOUGHT A SEWING MACHINE FROM A SEWING MACHINE SHOP) PURSUANT TO VA. CODE § 8.1A-201(B)(9). UNLESS SHE HAD KNOWLEDGE THAT HER PURCHASE VIOLATED THE AGREEMENT BETWEEN SEW WHAT AND THE BANK OF LENDERS, SHE WOULD NOT BE HELD RESPONSIBLE, AND BANK OF LENDERS CANNOT REPOSSESS MELANIE'S MACHINE.

QUESTION 5: SUSAN SUED CARL IN THE DISTRICT COURT IN ABINGDON FOR THE WESTERN DISTRICT OF VIRGINIA. CARL DID NOT WANT TO PROCEED IN FEDERAL COURT AND WANTS TO "REMOVE" THE CASE TO WASHINGTON COUNTY CIRCUIT COURT, WHICH HE BELIEVES WOULD BE LESS BIASED. THE JUDGE DENIES CARL'S MOTION TO REMOVE. DID THE JUDGE RULE CORRECTLY?

ANSWER 5: YES! ACCORDING TO 28 U.S.C. § 1441(A), REMOVAL WOULD REMOVE THE CASE FROM THE ORIGINAL CIRCUIT COURT TO THE APPLICABLE FEDERAL COURT, NOT VICE VERSA. FURTHER, SENDING A CASE FROM FEDERAL COURT (BACK) TO CIRCUIT COURT IS CALLED REMAND, NOT REMOVAL.

QUESTION 6: ELIZABETH FILED SUIT AGAINST THOMAS IN SMYTH COUNTY, AFTER A CAR ACCIDENT IN WHICH SHE ALLEGED THAT THOMAS ACTED NEGLIGENTLY AND CAUSED HER PERSONAL INJURY. WHEN THE TRIAL BEGAN, ELIZABETH ADMITTED UNDER CROSS-EXAMINATION THAT SHE HAD BEEN DRINKING JUST BEFORE DRIVING. THOMAS MOVED TO STRIKE ELIZABETH'S CLAIM BECAUSE SHE ADMITTED THAT SHE HAD BEEN CONTRIBUTORILY NEGLIGENT PER SE. WHEN THE JUDGE TOOK A BREATH TO RULE, ELIZABETH MOVED FOR A NONSUIT OF THE CASE. THE JUDGE DENIED HER NONSUIT BECAUSE HE HAD MADE UP HIS MIND AND WAS ABOUT TO RULE. DID THE JUDGE MISTAKE HIS RULING?

ANSWER 6: YES! PLAINTIFFS MAY TAKE A NONSUIT BY RIGHT BEFORE A MOTION TO STRIKE THE EVIDENCE HAS BEEN SUSTAINED UNDER VA. CODE § 8.01-380. BECAUSE THE JUDGE HAD ONLY TAKEN A PREPARATORY BREATH AND HAD NOT GRANTED THOMAS'S MOTION, ELIZABETH WAS WITHIN HER RIGHTS TO REQUEST A NONSUIT.

QUESTION 7: MAGGIE DRAFTED HER WILL IN RUSSELL COUNTY, SPECIFYING THAT SHE WANTED HER GRANDDAUGHTER ASHLEY TO INHERIT MAGGIE'S ENGAGEMENT RING. THE WILL WAS COMPLETELY VALID. AFTER THE WILL WAS PROPERLY SIGNED, SHE LEARNED THAT TYLER INTENDED TO PROPOSE TO HIS GIRLFRIEND AND WANTED TO GIVE HIM THE ENGAGEMENT RING. MAGGIE DECIDED THAT SHE WOULD GIVE TYLER THE RING ON JUNE 2, 2024. UNFORTUNATELY, MAGGIE ATTENDED JUDICIAL SQUARES ON JUNE 1, 2024, AND LAUGHED SO HARD THAT SHE HAD A HEART ATTACK AND PASSED AWAY. TYLER TRIED TO CLAIM THE RING AS A GIFT, BUT ASHLEY SAID THAT SHE HAD SUPERIOR RIGHTS BECAUSE SHE WAS NAMED IN THE WILL. WHO WINS?

ANSWER 7: ASHLEY DOES. THE WILL WAS VALID AT THE TIME OF HER DEATH, AND MAGGIE ONLY INTENDED A GIFT TO TYLER; THE EXCHANGE NEVER ACTUALLY TOOK PLACE. AS SUCH, ASHLEY IS THE RIGHTFUL OWNER OF THE ENGAGEMENT RING UNDER THE TERMS OF THE WILL.

QUESTION 8: TOM AND JERRY DECIDED TO ROB A BANK WITH A FRIEND, JEFF, IN BRISTOL CITY. JEFF GOT COLD FEET AND WENT TO THE POLICE TO REPORT THE PLAN TO ROB THE BANK. HE DECIDED NOT TO TELL TOM OR JERRY THAT HE WAS "OUT" AND THAT HE'D GONE TO THE POLICE. IN THE MEANTIME, TOM AND JERRY DECIDED TO STEAL A CAR TO DRIVE TO THE BANK SO THEIR OWN CARS WOULD NOT BE REPORTED. JEFF MADE UP AN EXCUSE THAT HE WAS SICK AND "WOULD CATCH THEM NEXT TIME." TOM AND JERRY SUCCESSFULLY STOLE THE CAR AND ROBBED THE BANK OF $500,000.00. IS JEFF LIABLE FOR ANYTHING?

ANSWER 8: JEFF IS LIABLE FOR THE STOLEN CAR AND THE $500,000, AS HE WAS PART OF A CRIMINAL CONSPIRACY. EVEN THOUGH HE TOLD THE POLICE OF THE ROBBERY, HE DID NOT TELL TOM AND JERRY THAT HE WOULD NO LONGER PARTICIPATE IN THE ROBBERY. AS SUCH, HE IS RESPONSIBLE FOR THE CONSEQUENCES STEMMING FROM THE ROBBERY, WHICH INCLUDES THE STOLEN CAR AND THE STOLEN MONEY.
ANYTHING?

QUESTION 9: SARAH HIRED JEREMY TO REPRESENT HER IN A CONTRACT ACTION IN TAZEWELL. THE REPRESENTATION AGREEMENT WAS SIGNED AND JEREMY BEGAN HIS WORK.

AS PART OF HER INITIAL INTAKE, SARAH PROVIDED NUMEROUS DOCUMENTS RELATED TO HER BUSINESS AND SALES. JEREMY SAVED ALL OF HER DOCUMENTS IN A FOLDER ON HIS SERVER LIKE NORMAL AND AGREED TO REPRESENT HER. THE COMPUTER SYSTEM WAS PASSWORD PROTECTED, BUT THE PASSWORD AS "P@SSWORD." HE ALSO INVESTED IN ANTI-MALWARE PROGRAMS AND HAD A DEDICATED STAFF MEMBER WHO WORKED AS ADMINISTRATOR ON THE SYSTEMS.

LATER THAT MONTH, JEREMY SUFFERED A CYBER ATTACK AND NUMEROUS CLIENT FILES WERE DUPLICATED ON THE HACKER'S DRIVE, INCLUDING SARAH'S BUSINESS INFORMATION. SARAH FILED A BAR COMPLAINT AGAINST JEREMY FOR FAILING TO PROTECT HER CONFIDENTIAL INFORMATION.

CAN JEREMY BE FOUND LIABLE FOR VIOLATING RULE 1:6 OF THE VIRGINIA RULES OF PROFESSIONAL CONDUCT?

ANSWER 9: POSSIBLY! IN THE CONTEXT OF VIRGINIA LAW, IF A LAWYER'S COMPUTER SYSTEM IS HACKED DUE TO A PREDICTABLE PASSWORD, THE LAWYER COULD POTENTIALLY BE HELD LIABLE FOR NOT REASONABLY PROTECTING HIS CLIENT'S CONFIDENTIAL INFORMATION. THE AMERICAN BAR ASSOCIATION AND THE VIRGINIA SUPREME COURT HAVE ISSUED GUIDELINES EMPHASIZING THE IMPORTANCE OF LAWYERS MAKING REASONABLE EFFORTS TO PROTECT CLIENT DATA.

IN THE CASE OF A PREDICTABLE PASSWORD LEADING TO A DATA BREACH, IT CAN BE ARGUED THAT THE LAWYER DID NOT TAKE REASONABLE STEPS TO PROTECT CLIENT DATA, AS STRONG PASSWORDS AND OTHER AUTHENTICATION MEASURES ARE COMMONLY RECOGNIZED AS BASIC DATA PROTECTION.

ETHICAL HYPOTHETICAL #1. MARK DECIDES TO OPEN HIS NEW PRACTICE IN PENNINGTON GAP. HE JUST GRADUATED FROM LAW SCHOOL AND HE'S LOOKING FORWARD TO HANGING OUT HIS SHINGLE. MARK HAS ALSO ALWAYS BEEN INTERESTED IN BITCOIN AND OTHER VIRTUAL CURRENCY. HE DECIDES THAT HE WILL ADVERTISE THAT HE WILL ACCEPT CERTAIN CRYPTOCURRENCY FOR HIS RETAINER, FOR CLIENTS WHO MAY HAVE INVESTED IN CRYPTOCURRENCY BUT NOT HAVE ENOUGH MONEY ON THEIR CREDIT CARDS, IN THEIR RETIREMENT ACCOUNTS, OR

IN THEIR BANK ACCOUNTS TO PAY AN ATTORNEY'S FEE. HE ALSO SETS UP A VIRTUAL WALLET TO ACCEPT THE CRYPTOCURRENCY PAYMENTS AND PROCEEDS TO SEND RETAINER AGREEMENTS TO CLIENTS AND ACCEPT CRYPTOCURRENCY AS PART OF HIS FEES.

ETHICAL HYPOTHETICAL #1 – QUESTION 1:

Is Mark allowed to accept cryptocurrency as part of his retainer agreement with a client?

ETHICAL HYPOTHETICAL #1 – ANSWER 1: YES, HE CAN ACCEPT CRYPTOCURRENCY. LEGAL ETHICS OPINION 1898 REQUIRES ONLY THAT THE "FEE ARRANGEMENT IS REASONABLE, OBJECTIVELY FAIR TO THE CLIENT, AND HAS BEEN AGREED TO BY THE CLIENT ONLY AFTER BEING INFORMED OF ITS IMPLICATIONS AND GIVEN THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT COUNSEL, ALL OF WHICH IS CONFIRMED IN WRITING." FURTHER, MARK MUST ENSURE THAT HE TAKES "COMPETENT AND REASONABLE SECURITY PRECAUTIONS TO SAFEKEEP THE CLIENT'S PROPERTY."

ETHICAL HYPOTHETICAL #1 – QUESTION 2:

If so, can Mark keep the cryptocurrency in its regular form, or must it be converted to US Currency and deposited in his trust account?

ETHICAL HYPOTHETICAL #1 – ANSWER 2: MARK IS ABLE TO KEEP THE CRYPTOCURRENCY IN ITS DIGITAL FORM AND IS NOT REQUIRED TO CONVERT IT TO US CURRENCY. *SEE* LEGAL ETHICS OPINION 1898.